

By: Freel Brown

H.B. No. 2152

A BILL TO BE ENTITLED

AN ACT

relating to licensing and regulation of auctioneers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1802.001, Occupations Code, is amended by amending Subdivisions (2), (3), and (5) and adding Subdivision (4-a) to read as follows:

(2) "Associate auctioneer" means an individual who, for compensation, is employed by and under the direct supervision of an [a-licensed] auctioneer licensed under this chapter to sell or offer to sell property at an auction.

(3) "Auction" means the sale of property through means of exchanges between an auctioneer and members of an audience consisting of a series of invitations for offers made by the auctioneer, offers by audience members, and the acceptance by the auctioneer of the highest or most favorable offer. The use of written bids, media technology, or mailings as part of a promotion, bidding, or acceptance or any other part of a transaction does not exclude the transaction from being classified as an auction [by competitive bid].

(4-a) "Auction company operator" means a person who is not an owner of an auction company but who has a vested financial interest in the auction company.

(5) "Auctioneer" means any person ~~[an individual]~~ who conducts [sells] or offers to conduct an [sell property at] auction

1 ~~[, with or without receiving valuable consideration, as a bid~~
2 ~~caller]~~.

3 SECTION 2. Section 1802.002, Occupations Code, is amended
4 to read as follows:

5 Sec. 1802.002. APPLICABILITY. This chapter does not apply
6 to:

7 (1) a sale conducted by order of a United States court
8 under Title 11, United States Code;

9 (2) a sale conducted by an employee of the United
10 States, this state, or a political subdivision of this state in the
11 course and scope of employment;

12 (3) ~~[a sale conducted by a charitable or nonprofit~~
13 ~~organization, if the auctioneer receives no compensation,~~

14 ~~[(4)]~~ a sale conducted by an individual of the
15 individual's property if the individual is not engaged in the
16 business of selling property as an auctioneer on a recurring basis;

17 (4) ~~[(5)]~~ a foreclosure sale of real property
18 personally conducted by a trustee under a deed of trust;

19 (5) ~~[(6)]~~ a foreclosure sale of personal property
20 personally conducted by:

21 (A) a person who holds a security interest in the
22 property, including a mortgage; or

23 (B) an employee or agent of a person described by
24 Paragraph (A) acting in the course and scope of employment, if:

25 (i) the employee or agent is not otherwise
26 engaged in the auction business; and

27 (ii) all property for sale in the auction is

1 subject to a security agreement;

2 (6) [~~(7)~~] a sale conducted by sealed bid;

3 (7) [~~(8)~~] an auction conducted only for student
4 training purposes as part of a course of study approved by the
5 department [~~executive director for auctioneers~~];

6 (8) [~~(9)~~] an auction conducted by a posted stockyard
7 or market agency as defined by the federal Packers and Stockyards
8 Act (7 U.S.C. Section 181 et seq.), as amended;

9 (9) [~~(10)~~] an auction of livestock conducted by a
10 nonprofit livestock trade association chartered in this state, if
11 the auction involves only the sale of livestock owned by members of
12 the trade association; or

13 (10) [~~(11)~~] an auction conducted by a charitable or
14 nonprofit organization chartered in this state, if the auction:

15 (A) is part of a fair that is organized under
16 state, county, or municipal authority; [~~and~~]

17 (B) involves only the sale of property owned by
18 the organization or owned or donated by the organization's members
19 or supporters; or

20 (C) is performed on a nonrecurring basis.

21 SECTION 3. Subchapter B, Chapter 1802, Occupations Code, is
22 amended by adding Section 1802.0515 to read as follows:

23 Sec. 1802.0515. AUCTION COMPANIES; REQUIREMENTS. (a) An
24 auction company may not arrange, manage, sponsor, advertise,
25 conduct, or offer to conduct auctions held in this state unless the
26 auction company is owned or operated by an auctioneer licensed
27 under this chapter.

1 (b) An auction company that advertises to conduct an auction
2 in this state shall provide in the advertisement the name and
3 license number of the auctioneer who owns the company, operates the
4 company, or is conducting the auction.

5 SECTION 4. This Act takes effect September 1, 2005.

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MAR 07 2005

Filed with the Chief Clerk

MAR 14 2005

Read first time and referred to Committee on

Licensing & Administrative Procedures

Reported ____favorably (as amended)
(as substituted)

Sent to Committee on (Calendars)
(Local & Consent Calendars)

Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend) by a vote of _____ yeas, _____ nays, _____ present, not voting

Read third time (amended); finally passed (failed to pass) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

Engrossed

Sent to Senate

CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:

Received from the House

Read and referred to Committee on

Reported favorably

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

Ordered not printed

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by (unanimous consent)
(_____ yeas, _____ nays)

Read second time, _____, and passed to third reading by (unanimous consent)
(a viva voce vote)
(_____ years, _____ nays)

Senate and Constitutional 3 Day Rules suspended by a vote of _____ yeas, _____ nays

Read third time, _____, and passed by a (viva voce vote)
(_____ yeas, _____ nays)

Returned to the House

SECRETARY OF THE SENATE

OTHER SENATE ACTION:

- _____ Returned from the Senate (as substituted)
(with amendments)
- _____ House concurred in Senate amendments by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)
- _____ House refused to concur in Senate amendments and requested the appointment of a conference committee
by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)
- _____ House conferees appointed: _____, Chair; _____,
_____, _____, _____
- _____ Senate granted House request. Senate conferees appointed: _____, Chair;
_____, _____, _____, _____
- _____ Conference committee report adopted (rejected) by the House by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)
- _____ Conference committee report adopted (rejected) by the Senate by a (viva voce vote)
(record vote of _____ yeas, _____ nays)